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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/448,374	11/23/1999	STEVEN DARDINSKI	102314-46	4969

21125 7590 05/18/2005  
NUTTER MCCLENNEN & FISH LLP  
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BOSTON, MA 02210-2604

EXAMINER

INGBERG, TODD D

ART UNIT	PAPER NUMBER
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2193

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/448,374

Applicant(s)

DARDINSKI ET AL.

Examiner

Todd Ingberg

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-41, 43-76 and 78.  
Claim(s) withdrawn from consideration: 42, 77 and 79-98.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Todd Ingberg  
Primary Examiner  
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## **ADVISORY ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed March 21, 2005 have been fully considered but they are not persuasive. The following two major arguments are key to the Applicant's response after final.

- Date of ControlShell Version 6.0
- Updating Objects in ControlShell without recompiling

#### **Date of ControlShell Version 6.0**

The Examiner has cite Epstein and the press release for ControlShell 6.0 to indicate the release date of Real-Time Innovations commercial product ControlShell version 6.0. The copyright date in the manual for ControlShell 6.0 would not on it's own indicate the product as prior art. Although, the Examiner finds the Applicant's arguments against the fact pattern mentioned above in view of Epstein to be well thought out and well written. The Patent Office is maintaining the date of ControlShell version 6.0 as prior art as secured by the Press release for the product. The copyright date in the manual is reflective to when a manual is published. the manual refers to a specific version number and not a point release of the version. Such as version 6.A or 6.01 etc.

#### **Updating Objects in ControlShell without recompiling**

On page 21 of the Applicant's response the Applicant states the rejection of updating instances of objects (the runtime image) without recompilation is bridged with a clause in the manual on pages 32-33. Although, the section is cited in the rejection, the reference must be taken as a whole. When one reviews the product manual, an object oriented implementation for a

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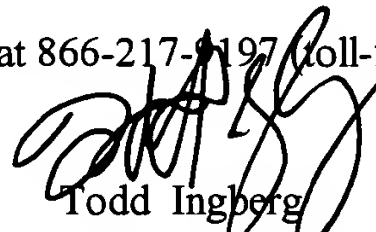
control system is taught. The version of the product version 5.1 is of record. This was a critical factor in evaluating the amended claims and Applicant's claimed invention. The amendment focused on the key limitation of updating instances of objects without recompilation. Version 5.1 of ControlShell also updated some of the types of objects at runtime. One of ordinary skill in the art recognizes industry term "dynamic binding". Version 5.1 on pages 2-2 to 2-3 explicitly states "... many of the instances without recompilation". The Examiner reviewed the instances of the claimed invention and did not deem the updating of only some of the types of instances of objects to be sufficient. Version 6.0 on page D-8 mentions the newer version includes addition of APP, COG and FSM object types, now supported with dynamic binding. Further on page D-8 in understanding the terms of the reference the definition of COG is mentioned. It is important to note that by definition a COG is not compiled rather the runtime environment performs the runtime parsers to create instances (as part of the definition of dynamic binding above). These points when viewing the manual as a teaching that covers details of the types of objects and the update mechanism are the key elements of Applicants arguments after final.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd Ingberg whose telephone number is (571) 272-3723. The examiner can normally be reached on during the work week..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Todd Ingberg  
Primary Examiner  
Art Unit 2193

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